

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A 7.5 PERCENT HYDROELECTRIC FACILITY TAX ON THE GROSS REVENUE DERIVED FROM THE SALE OF ELECTRICITY FROM CERTAIN HYDROELECTRIC FACILITIES; PROVIDING DEFINITIONS; PROVIDING EXEMPTIONS FROM THE HYDROELECTRIC FACILITY TAX; PROVIDING FOR THE ADMINISTRATION OF THE HYDROELECTRIC FACILITY TAX AND FOR PENALTIES AND INTEREST; REQUIRING THAT 50 PERCENT OF THE PROCEEDS FROM THE HYDROELECTRIC FACILITY TAX BE DEPOSITED IN THE STATE GENERAL FUND; REQUIRING THAT 50 PERCENT OF THE PROCEEDS BE ALLOCATED TO COUNTIES IN WHICH HYDROELECTRIC FACILITIES ARE LOCATED; PROVIDING FOR THE DISTRIBUTION OF THE COUNTY SHARE OF THE TAX TO LOCAL TAXING JURISDICTIONS; PROVIDING A DEFINITION OF "LOCAL TAXING JURISDICTION"; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 12], unless the context requires otherwise, the following definitions apply:

(1) "Hydroelectric facility" means a turbine generator or any combination of physically connected turbine generators at a single site that are driven by falling water and that produce electricity.

(2) "Person" means an individual, estate, trust, receiver, cooperative association, corporation, small business corporation, limited liability company, firm, partnership, joint venture, syndicate, or other entity.

NEW SECTION. Section 2. Hydroelectric tax -- rate of tax -- exemptions. (1) Except as provided in subsection (2), a hydroelectric tax is imposed on the gross revenue derived from the sale of electricity produced from a hydroelectric facility with a nameplate capacity of 5 megawatts or greater. The tax is imposed at the rate of 7.5% of the gross revenue derived from the sale of electricity produced from a hydroelectric facility or from a combination of hydroelectric facilities owned or operated by the same person.

(2) (a) The gross revenue derived from the sale of electricity produced from a hydroelectric facility

owned by the state or by an agency of the United States government is exempt from the tax imposed by this section.

(b) The gross revenue derived from the sale of electricity produced from a hydroelectric facility owned by a municipal electric utility referred to in 69-8-103(5) or by a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

NEW SECTION. Section 3. Returns -- payment -- authority of department. (1) On or before the 60th day following the end of the calendar quarter in which the tax imposed by [sections 1 through 12] is payable, a return, on a form provided by the department, must be filed with the department and must be accompanied by payment of the tax for the preceding calendar quarter.

(2) Each person engaged in producing electricity from a hydroelectric facility in this state that is subject to the tax under [sections 1 through 12] shall file a return.

(3) (a) A person required to pay the tax imposed by [sections 1 through 12] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through 12] and the rules prescribed by the department. Each statement or return must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of [sections 1 through 12], the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

- (i) require the attendance of a person having knowledge or information relevant to a return;
 - (ii) compel the production of books, papers, records, or memoranda by the person required to attend;
 - (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;
 - (iv) take testimony on matters material to the determination; and
 - (v) administer oaths or affirmations.
- (4) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

1
2 **NEW SECTION. Section 4. Examination of return -- adjustments -- delivery of notices and**
3 **demands.** (1) If the department determines that the amount of tax due is different from the amount reported,
4 the amount of tax computed on the basis of the examination conducted pursuant to [section 3] constitutes the
5 tax to be paid.

6 (2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must
7 be paid to the department within 30 days after notice of the amount and demand for payment is mailed or
8 delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211.
9 If the amount of the tax found due by the department is less than that reported as due on the return and the tax
10 has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person
11 making the return.

12 (3) The notice and demand provided for in this section must contain a statement of the computation of
13 the tax and interest and must be:

14 (a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's
15 last-known address; or

16 (b) served personally upon the taxpayer.

17 (4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform
18 dispute review procedure provided in 15-1-211.

19
20 **NEW SECTION. Section 5. Penalties and interest for violation.** (1) (a) A person who fails to file a
21 return as required by [section 3] must be assessed a penalty as provided in 15-1-216. The department may
22 waive the penalty as provided in 15-1-206.

23 (b) A person who fails to file the return required by [section 3] and to pay the tax before the due date
24 must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty
25 pursuant to 15-1-206.

26 (2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as
27 provided in 15-1-216.

28
29 **NEW SECTION. Section 6. Authority to collect delinquent taxes.** (1) (a) The department shall collect
30 taxes that are delinquent as determined under [sections 1 through 12].

(b) If a tax imposed by [sections 1 through 12] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds that are due to the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review of the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

NEW SECTION. Section 7. Interest on deficiency -- penalty. (1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the return and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by 15-1-216(1)(c) must be added to the amount of the deficiency.

NEW SECTION. Section 8. Limitations -- action on fraudulent return. (1) Except in the case of a person who fails to file a return or who purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of [sections 1 through 12], a deficiency may not be assessed or collected with respect to a month or quarter for which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date on which the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be assessed at any time prior to the expiration of the period to which the taxpayer consented.

(3) Whenever a return is required to be filed and the taxpayer files a fraudulent return or fails to file the return, the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment.

1
2 **NEW SECTION. Section 9. Refund or credit for overpayment -- refund from county -- interest --**
3 **limitations.** (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 1
4 through 12] must be filed within 5 years of the date on which the return was due, without regard to any extension
5 of time for filing.

6 (2) (a) The amount of an overpayment credited against any tax, penalty, or interest due for any tax
7 period or any refund or portion of a refund, which has not been distributed pursuant to [section 12], must be
8 withheld from the current distribution made pursuant to [section 12].

9 (b) If the amount of the refund reduces the amount of tax previously distributed pursuant to [section 12]
10 and if the current distribution, if any, is insufficient to offset the refund, then the department shall demand the
11 amount of the refund from the county to which the tax was originally distributed. The county treasurer shall remit
12 the amount demanded within 30 days of the receipt of notice from the department.

13 (3) (a) Interest on an overpayment must be paid or credited at the same rate as the interest rate charged
14 on unpaid taxes as provided in 15-1-216.

15 (b) Except as provided in subsection (3)(c), interest must be paid from the date on which the return was
16 due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the
17 processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary
18 information.

19 (c) The department is not required to pay interest if:

- 20 (i) the overpayment is refunded or credited within 6 months of the date on which a claim was filed; or
21 (ii) the amount of overpayment and interest does not exceed \$10.

22
23 **NEW SECTION. Section 10. Administration -- rules.** The department shall:

24 (1) administer and enforce the provisions of [sections 1 through 12];

25 (2) cause to be prepared and distributed forms and information that may be necessary to administer
26 the provisions of [sections 1 through 12]; and

27 (3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of
28 [sections 1 through 12]. The rules must specify the method for reporting gross revenue derived from the sale
29 of electricity from a hydroelectric facility or from a combination of hydroelectric facilities owned or operated by
30 the same person. The rules must provide for reporting on the same return the amount of electricity produced

1 and sold from each hydroelectric facility owned or operated by the person in the state and for reporting the
2 amount of gross revenue attributable to each hydroelectric facility in the state.

3
4 **NEW SECTION. Section 11. Disposition of revenue.** (1) Fifty percent of the taxes collected under
5 [sections 1 through 12] must, in accordance with the provisions of 15-1-501, be deposited in the state general
6 fund.

7 (2) Fifty percent of the tax collected must be distributed to counties in which the hydroelectric facilities
8 are located. The hydroelectric facility taxes allocated to each county must be deposited in an account in the state
9 special revenue fund and transferred to each county for distribution as provided in [section 12].

10
11 **NEW SECTION. Section 12. Distribution of taxes to local taxing jurisdictions -- definition --**
12 **appropriation.** (1) Subject to subsection (2), for each calendar quarter, the department shall determine each
13 county's share of the amount of tax, interest, and penalty deposited in the state special revenue account as
14 provided in [section 11(2)]. The department shall remit the amounts to be distributed under this section to the
15 county treasurer by the following dates:

16 (a) On or before August 1 of each year, the department shall remit to the county treasurer hydroelectric
17 facility tax payments received for the calendar quarter ending March 31 of the current year.

18 (b) On or before November 1 of each year, the department shall remit to the county treasurer
19 hydroelectric facility tax payments received for the calendar quarter ending June 30 of the current year.

20 (c) On or before February 1 of each year, the department shall remit to the county treasurer
21 hydroelectric facility tax payments received for the calendar quarter ending September 30 of the previous year.

22 (d) On or before May 1 of each year, the department shall remit to the county treasurer hydroelectric
23 facility tax payments received for the calendar quarter ending December 31 of the previous year.

24 (2) (a) By the dates specified in subsection (1), the department shall provide to each county treasurer
25 the county's share of the amount of tax, interest, and penalty that is attributable to each hydroelectric facility
26 owned or operated by a person in a county.

27 (b) If the department cannot determine from available information the amount of tax, interest, and
28 penalty attributable to each hydroelectric facility owned or operated by a person in the county, then the amount
29 attributable to each hydroelectric facility is equal to the total amount of taxes, interest, and penalty collected from
30 the person in the applicable quarter multiplied by the ratio of the amount of electricity produced and sold from

1 each hydroelectric facility owned and operated by the person in the county during the applicable quarter to the
2 total amount of electricity produced and sold from all hydroelectric facilities owned or operated by the person
3 in the state during the applicable quarter.

4 (3) (a) For the purposes of the distribution of taxes to local taxing jurisdictions under subsection (3)(b),
5 the county treasurer shall apportion the amounts received under subsection (1) to each hydroelectric facility in
6 the county according to the amounts determined by the department under subsection (2).

7 (b) The county treasurer shall distribute to each local taxing jurisdiction the amount apportioned to each
8 hydroelectric facility under subsection (3)(a) in proportion to the taxable value of the hydroelectric facility in the
9 local taxing jurisdiction and in proportion to the mill levies levied against the hydroelectric facility by each local
10 taxing jurisdiction in which the hydroelectric facility is located.

11 (4) (a) For the purposes of this section, "local taxing jurisdiction" means a jurisdiction levying mills
12 against taxable property and includes but is not limited to a county, city, school district, and miscellaneous taxing
13 district.

14 (b) The term does not include tax increment financing districts, county or state school equalization levies
15 provided for in 20-9-331, 20-9-333, and 20-9-360, and the Montana university system levies provided for in
16 15-10-107, 20-25-423, and 20-25-439.

17 (5) The distribution to local taxing jurisdictions under this section is statutorily appropriated, as provided
18 in 17-7-502, from the state special revenue fund.

19
20 **Section 13.** Section 17-7-502, MCA, is amended to read:

21 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
22 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without
23 the need for a biennial legislative appropriation or budget amendment.

24 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
25 of the following provisions:

26 (a) The law containing the statutory authority must be listed in subsection (3).

27 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
28 appropriation is made as provided in this section.

29 (3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105;
30 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706;

1 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; [section 12]; 16-11-404; 17-3-106;
2 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301;
3 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306;
4 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206;
5 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108;
6 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003;
7 90-6-710; and 90-9-306.

8 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
9 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
10 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
11 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
12 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
13 appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of
14 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360,
15 L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's
16 unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates
17 July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion
18 of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch.
19 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003,
20 the inclusion of 2-15-151 terminates June 30, 2005.)"

21
22 **NEW SECTION.** **Section 14. Codification instruction.** [Sections 1 through 12] are intended to be
23 codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 12].
24

25 **NEW SECTION.** **Section 15. Applicability.** [This act] applies to the production and sales of electricity
26 from hydroelectric facilities occurring after December 31, 2005.

27 - END -